Supreme Court, U.S.
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NO. 96-1141

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1996

CITY OF CHARLOTTE, NORTH CAROLINA,
Cross-Petitioner,

vs.

DARRELL A. PRICE, DAVID H. HOLLAND,
ROBERT A. HOLL, OSWALD D. HOLSHOUSER,
RAYMOND T. CARLTON, S. VANCE ELSTROM,
and MARK E. CORWIN,
Cross-Respondents,

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

BRIEF OF CROSS-RESPONDENTS OPPOSING CROSS-PETITION FOR WRIT OF CERTIORARI

Louis L. Lesesne Jr.
1001 Elizabeth Avenue, Ste. 1-D
Charlotte NC 28204-2234
704/372-5700
N.C. State Bar No. 6723

Counsel of Record for
Cross-Respondents

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REASONS FOR DENYING THE PETITION

I.
THE HOLDING OF THE COURT OF APPEALS IS CONSISTENT WITH DECISIONS OF THIS COURT FINDING AN ENTITLEMENT TO DAMAGES WHERE ONE HAS BEEN DENIED A CONSTITUTIONAL RIGHT.

The Court should deny the City's cross-petition because the Court of Appeals decision is completely consistent with prior holdings of this Court. The City's position is that, contrary to consistent holdings of the court, even though the cross-respondents (hereinafter "the officers") were deprived a constitutional right, the promise of the protection of the Constitution is illusory, because there is no remedy for the violation.

The City's use of racial quotas violated the Equal Protection Clause by making it more difficult for the officers to be promoted than it was for black applicants. It is this violation for which a remedy is sought, not the denial of a promotion. That wrong is independent of the denial of a promotion.

Beginning with *Regents of the University of California v. Bakke*, 438 U.S. 265, 280, fn. 14 (1978), and continuing through *Northeastern Florida Chapter of the Associated General Contractors of America v. City of Jacksonville, Florida*, 508 U.S. 656 (1993), and *Adarand Constructors Inc. v. Pena*, ____ U.S. ____, 115 S.Ct. 2097, 132 L.Ed.2d 158 (1995), the Court has consistently held that one victimized by the use of unconstitutional racial quotas need not show that he was denied the ultimate benefit in order to have standing to challenge the use of such quotas. Where one shows that official action has made it more difficult for to secure the benefit, he has sustained an "injury-in-fact" which the Courts can remedy.

> When the government erects a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, a member of the former group seeking to challenge the barrier need not allege that he would have obtained the benefit but for the barrier in order to establish standing. The "injury in fact" in an equal protection case of this variety is the denial of equal treatment resulting from the imposition of the barrier, not the ultimate inability to obtain the benefit.

City of Jacksonville, supra, 508 U.S. at ___, 124 L.Ed.2d at 597.

The interests being protected are different from, but no less real than, those where a person is actually denied a job. Such racial classifications by themselves carry the danger of stigmatic harm. They threaten to stereotype individuals because of their race and to incite racial hostility. *Shaw v. Reno*, 509 U.S ___, 113 S.Ct. 2816, 2824, 125 L.Ed.2d 511 (1993); *City of Richmond v. J.A. Croson* Co., 488 U.S. 469, 493 (1989) (plurality opinion). See also *City of Richmond v. J.A. Croson Co.*, 488 U.S. at 516-517 (opinion of Justice Stevens) (such illegal racial classifications result in stigmatization of the disadvantaged class as well as the beneficiaries of the policy). It is these interests which a damages award compensates, independently of the denial of a promotion. It does not compensate for the "value" of the constitutional right, which would be contrary to *Memphis Community School District v. Stachura*, 477 U.S. 299, 308 (1986).

Even though *Bakke, City of Jacksonville* and *Adarand* make it absolutely clear that the officers suffered an "injury in fact," conferring on them standing and entitling them to relief, and even though the City has now (belatedly and reluctantly) recognized as much, it contends that there can be no monetary compensation for such a deprivation.

Once the officers showed that they had suffered a constitutional injury in fact, they were entitled a remedy for such injury. The violation of a legal right entitles the victim to the full range of remedies required to compensate for such an injury, including money damages, even where the ultimate goal would have been unavailable.

Carey v. Piphus, 435 U.S. 247 (1978) recognizes the officers' right to recover damages for the injury in fact, without being required to prove that the denial of a promotion. *Carey v. Piphus* held that a party denied a constitutional right may recover damages for the deprivation of that right, *even though the same ultimate result would have occurred* had there been no constitutional violation. The decision here is completely consistent with *Carey v. Piphus.*

Plaintiffs in *Carey v. Piphus* were public school students suspended from school without being provided due process. The Court held that even if the students were shown to have been correctly suspended, such that the same result would have occurred even if had they been afforded due process, they could recover damages *caused by the denial of due process itself*, provided that they proved that they "actually suffered distress because of the denial of procedural due process itself." 435 U.S. at 263.

Similarly, *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 374 (1982), brought under the Fair Housing Act, held that a "tester" need not demonstrate that he was denied housing in order to be entitled to damages. Indeed, the "tester" was not even actually seeking housing.

The trial judge's instructions to the jury here were completely consistent with *Carey v. Piphus*. The instructions made it clear that the jury could only award damages to the extent that they suffered emotional distress by being subjected to the uneven playing field. They were not to award damages for any officer's not being promoted.

The officers' testimony at trial showed that the City's actions had direct consequences to them, independent of their not being promoted. The City's actions,

including misleading the officers about what use would be made of racial quotas in the promotion process, thwarted each officer's aspirations and goals. Each described how the City's misleading him with its assurances of fair and equal treatment demoralized him. The City, after having deceived these officers, now tries to dismiss the consequences of its actions as having no value.

The Court of Appeals decision is also consistent with numerous cases recognizing in general an injured party's right to recover the full range of damages available to remedy a constitutional or statutory deprivation. In *Bell v. Hood*, 327 U.S. 678, 684 (1946), where there was no specific provision for a remedy for a constitutional violation, the Court said:

> Where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done.

See also *Franklin v. Gwinnett County Public Schools*, 503 U.S. 60 (1992) (plaintiff entitled to recover money damages in an action under Title IX of the Education Amendments of 1972, even though the statute contained no provision for such a remedy, pursuant to the "traditional presumption in favor of appropriate relief); *Sullivan v. Little Hunting Park Inc.*, 396 U.S. 229, 239 (1969) ("The existence of a statutory right implies the existence of all necessary and appropriate remedies").

Compensatory money damages are quintessentially the type of tort damages which are allowed to remedy constitutional violations.

> Rights, constitutional and otherwise, do not exist in a vacuum. Their purpose is to protect persons from injuries to particular interests, and their contours are shaped by the interests they protect.
>
> Our legal system's concept of damages reflects this view of legal rights. "The cardinal principle of damages in Anglo-American law is that of *compensation* for the injury caused to plaintiff by defendant's breach of duty." 2 F.Harper & F. James, Law of Torts § 25.1, p. 1299 (1956) (emphasis in original). The Court implicitly has recognized the applicability of this principle to actions under § 1983 by stating that damages are available under that section for actions "found . . . to have been violative . . . constitutional rights *and to have caused compensable injury* . . . ."

Carey v. Piphus, 435 U.S. at 254-255 (emphasis supplied in original).

The City offers no principled rationale why these authorities are inconsistent with the Court of Appeals holding. The availability of injunctive and declaratory relief does not address the officers' entitlement to recover compensatory damages. Their entitlement to recover is completely consistent with prior holdings of this Court.

II.
THE DECISION IS NOT INCONSISTENT WITH CONSOLIDATED RAIL CORP. V. GOTTSHALL

The City attempts to create a conflict between the

Court of Appeals decision and *Consolidated Rail Corp. v. Gottshall*, 512 U.S. 532 (1994) reflects nothing more than an effort to invoke the spectre of a "floodgate of litigation." There is no connection between the issue presented here and the issues of statutory construction presented in *Gottshall.* It suggestion otherwise is frivolous.

Conclusion

Because the Fourth Circuit's decision is totally consistent with authority of this Court, there exist no grounds for allowing the cross-petition, and it should be denied.

LOUIS L. LESESNE, JR.
1001 Elizabeth Ave., Suite 1-D
Charlotte, NC 28204-2234
704/372-5700
N.C. State Bar # 6723

Counsel of Record
for Cross-Respondents